IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEALS NO.44/2002 & 38/2003

CRIMINAL APPEAL NO.44/2002

Freddy A. Peats,
Central Jail, Aguada, Goa. .... Appellant.

V/s.

State of Goa. .... Respondent.

Shri S.N. Joshi, Advocate under Legal Aid Scheme.

Shri V.P. Thali, Special Public Prosecutor for the Respondent.

CRIMINAL APPEAL NO.38/2003

E.C. Macbride @ Owens.
K-801, CII WELLINGTON,
New Zealand, Passport No.
J-348477, Ireland dt. 19.11.92. .... Applicant.

V/s.

State (through Public Prosecutor) .... Respondent.

Shri S.G. Bhobe, Advocate under Legal Aid Scheme.

Shri V.P. Thali, Special Public Prosecutor for the Respondent.

CORAM : P.V. HARDAS, J.

DATE : AUGUST 14, 2003.

ORAL JUDGMENT:

The appellants who are original accused Nos.1 and 3, challenge their conviction and sentence passed by the Addl. Sessions Judge, South Goa, Margao, by Judgment dated 12.7.2002 in Sessions Case No.12/1999

and Sessions Case No.53/2000. The appellant Freddy Peats in Criminal Appeal No.44/2002 stands convicted for an offence punishable under Sections 367, read with 120-B of the Indian Penal Code, 372 and 363 of the Indian Penal Code and is sentenced to undergo R.I. for 7 years, R.I. for 7 years and R.I. for 3 years respectively. The appellant Macbride @ Owens in Criminal Appeal No. 38/2003 stands convicted for the offences punishable under Sections 377 of the Indian Penal Code, 367 read with 120-B of the Indian Penal Code and 323 of the Indian Penal Code and is sentenced to undergo R.I. for 7 years and fine of Rs.5,000/-, in default to undergo S.I. for 2 years, R.I. for 7 years and a fine of Rs.5,000/- in default to undergo S.I. for 2 years and R.I. for one year and a fine of Rs.1,000/- in default to undergo S.I. for two months, respectively.

2. The facts, in brief, as are necessary for the decision of the appeals, are set out hereunder:

PW.1 S.R. Vargaraj was residing at Fatorda, Margao and was working as Assistant Mining Engineer. His minor son Subodh Kumar was residing with him at the relevant time. Subodh had a hobby of collecting stamps and coins. The appellant Freddy Peats was also

residing at Fatorda in a flat situated behind the Petrol Pump. Sometime during the end of March, 1991, Subodh had collected some stamps and foreign coins from the appellant Freddy Peats. On that day, Subodh had come late to his house. Subodh informed his mother that he had some pains in his penis. She had applied some ointment to the private part of Subodh and had informed her husband PW.1 S.R. Vargaraj that Subodh had complained of pain in his private part. PW.1 S.R. Vargaraj, therefore, examined the private part of Subodh and found that there were some scratches on his person. He questioned his son as to what had happened. However, Subodh did not disclose anything to him. On the next day, he went to the flat of appellant Freddy Peats. The appellant Freddy Peats was not available in the flat and the children who were playing in the open space informed PW.1 Vargaraj that there was no one in the flat. PW.1 Vargaraj then questioned his son again on the next day as to what had happened and how he had scratches on his penis. Thereupon, Subodh is alleged to have informed his father PW.1 S.R. Vargaraj that appellant/accused No.1 Freddy Peats had fondled and played with his private part. Subodh also disclosed that the accused Freddy Peats had also taken his photographs in a nude condition and the accused Freddy Peats had also

promised subodh that accused Freddy Peats would send him to foreign country. Subodh and his mother had also informed PW.1 S.R. Vargaraj that accused Freddy Peats had given some foreign stamps and an amount of Rs.4/- to Subodh. PW.1 was little reticence in lodging the report in view of the attending adverse publicity which would generate. During his morning walk, he met the Dy. Superintendent of Police Shri Santoba Dessai and informed the Dy.S.P. about the incident disclosed by Subodh. Dy.S.P. called PW.1 Vargaraj to the Police Station and recorded his complaint which is at Exhibit PW.1/A. Thus started the investigation into the nefarious activities of the accused Freddy Peats. It may incidentally be stated that accused Freddy Peats is undergoing his sentence of Imprisonment of Life awarded to him by the trial Court in Sessions Case No.24/92, which was confirmed by the Division Bench of this Court by its Judgment dated 2.4.1998 in Criminal Appeal No.4/1996.

3. Pursuant to the Order in Writ Petition filed by child activist Ms. S. Barse, this Court had directed the C.B.I. to investigate the role of certain foreigners and, therefore, a supplementary charge-sheet came to be filed against the other accused. The learned Addl. Sessions Judge, South

Goa, Margao convicted and sentenced the appellants as aforestated.

4. The victims who are young boys, have been examined as PWs.8, 9, 14 and 15, on the basis of whose testimony, the learned trial Court has convicted and sentenced the appellants. The names of the children are withheld to protect them from any adverse publicity and, therefore, they shall be referred to by the serial numbers at which they were examined as witnesses in the trial Court.

5. PW.8 states that in the year 1981 his father and his mother were separated and he along with his brothers, was residing with his mother. Though his mother was employed, she could not afford to spend money for their upbringing as his father was not supporting them. In 1980 his mother had kept him and his brothers in an orphanage which was run by the appellant Freddy Peats at Colva. After about 2 to 3 years, the appellant Freddy Peats shifted his orphanage in a flat at Fatorda. There used to be about 20 to 25 boys, mostly below the age of 12 years, staying in the orphanage run by the appellant Freddy Peats. PW.8 states that he was about 10 years of age when he began staying with the appellant Freddy Peats

in the Orphanage at Fatorda. He further states that the appellant Freddy Peats used to be naked mostly in the night time and Freddy Peats used to call the boys in his room during the night time. The said boys also used to be naked. The appellant Freddy Peats used to ask the boys to masturbate him. The children were asked to suck the penis of Freddy Peats. Many foreigners used to visit the flat of the appellant Freddy Peats and the foreigners used to take the children whom they liked to the place where the foreigners were staying. The foreigners used to take the boys with the consent of appellant Freddy Peats. The foreigners used to keep the boys with them for some days and thereafter, used to send the boys back to the flat of Freddy Peats. The foreigners used to give some money to the appellant Freddy Peats for taking the boys. PW.8 further states that he had gone with a foreigner by name Neil Johnson who used to come to Goa every year and used to stay in Goa for 3 to 4 months. The foreigners used to give some clothes to the boys also. The said foreigner Neil Johnson used to take PW.8 to a hotel named "Sukhsagar" at Colva. He has identified the appellant E.C. Macbride @ Owens/original accused No.3 as the foreigner to whom he had met at the flat of appellant Freddy Peats. Appellant Macbride @ Owens used to also come to Goa

every year and PW.8 used to sometime go with him. Appellant Macbride @ Owens used to take him to one guest house at Benaulim which was owned by PW.3 Idalina Crasto. The evidence of PW.3 Crasto is that she has identified accused No.3 as the person who had come to her guest house on 2 or 3 occasions, accompanied by some children. According to her, the boys used to stay with accused No.3 during his stay in the guest house.

6. According to PW.8, accused No.3 Macbride @ Owens used to insist that the boys should accompany him in the bed. Accused No.3 used to ask the boys to masturbate him and also to suck his penis. Accused No.3 used to offer clothes and money to the boys. Once accused No.3 had insisted that PW.8 should have inter-course, but he, however, refused. PW.8 has also stated that accused No.3 used to ask PW.8 to masturbate him and to indulge in oral sex. PW.8 has further stated that appellant Freddy Peats used to deposit money in his account and used to frequently receive the letter from abroad as also some parcels. He was made to indulge in perverted sexual activities with some foreigners also.

7. In his cross examination, he has admitted

that he used to visit his mother when he was staying in the orphanage and used to stay with his mother sometimes for two weeks or three weeks. His mother also used to visit the orphanage once a year. According to him, he had informed his mother that appellant No.1 Freddy Peats was telling him to masturbate him and was also asking him to suck his penis. However, the mother had asked him to understand her situation and to understand her problems. His mother had also told him that she had no other place where she could send him and his brother. His mother had also asked him to bear with whatever was happening. Certain omissions were brought out in respect of this witness not mentioning the name of accused No.3 in his statement. The explanation given by this witness is that he was not asked by the police to disclose the name of the foreigners who used to visit appellant Freddy Peats. According to him, when his statement was being recorded by CBI Officers, certain photographs of the foreigners were shown to him and he had identified accused No.3 and the foreigners. He has stated that the photographs which he had identified of accused No.3, he was also in the photograph. He has also admitted that the police had attached several photographs and medicines which were found in the flat

of accused Freddy Peats. He has admitted that he does not recollect the date, month and the year in which accused No.3 first visited accused No.1. He has, however, admitted that accused No.3 had last come to the flat of accused Freddy Peats in the year in which Freddy Peats was arrested. Accused No.3 had also come to Goa after the arrest of accused Freddy Peats. Because of passage of time, PW.8 was unable to state as to how many time accused No.3 had visited the flat of accused Freddy Peats. He has admitted that accused No.3 had once taken him to Benaulim at the guest house of Pw.3 Idalina Crasto during the Christmas time. He has admitted that he used to take permission of Freddy Peats for accompanying the foreigners.

8. PW.9 states that his father expired when he was young and when he was about six years' of age, he started residing in the orphanage run by accused No.1 Freddy Peats. He states that his mother was poor and could not afford to bring them up. He had four brothers and one sister. PW.9 states that accused No.1 Freddy Peats always used to stay naked in the flat and the boys also used to remain naked. During the night time, accused No.1 used to be in his bedroom and used to take some boys in his bedroom. PW.9 states that accused No.1 Freddy Peats was also taking

him in his bedroom during the night times and he used to tell them to masturbate and also used to tell them to satisfy him. Accused No.1 Freddy Peats also used to suck their penis. He states that after two to three years after he started staying, his brother was also brought to the orphanage by his mother. Accused No.1 Freddy Peats used to take most of the boys in his bedroom and used to make them to masturbate him and suck his penis. Accused No.1 Freddy Peats also used to do the same thing to the boys. He states that accused No.1 Freddy Peats has done this to me several times. He states that many foreigners used to visit accused No.1 in his flat and one of the foreigners is Owens and after talking with the accused No.1, they used to take some boys with them. PW.9 has stated that the foreigner named Owens used to come to Goa once in a year and used to visit the orphanage and take children from the orphanage along with him. He has stated that the foreigner Owens had also taken him several times to Benaulim at Crasto Guest House and the foreigners used to give money to the accused No.1. PW.9 has stated that accused No.1 used to receive letters and parcels from the foreigners. PW.9 has identified the foreigner Owens in the photograph Exhibit PW.2/A, as also in the photograph Exhibit PW.2/B and has stated that accused No.3 looked like

Owens. PW.9 states that he is having letters written by Owens and he used to write letters to him from New Zealand. He states that they used to go to Crasto Guest House at Benaulim. All the boys and the said Owens used to sleep in one bedroom and the accused No.3 Owens used to make them to masturbate him and also used to ask them to suck his penis. He has stated that Owens also used to masturbate them and suck their penis and he has done that also to PW.9. PW.9 states that the other foreigners who were visiting accused No.1 Freddy Peats, were also asking them to masturbate them and suck their penis. PW.9 states that accused No.3 Owens used to send money through the State Bank of India, Borim. PW.9 states that accused No.1 Freddy Peats had taken nude photographs of the boys who were in the orphanage and he had also taken his nude photograph.

9. PW.9 states in his cross examination that he does not know whether accused Freddy Peats was taking money from the foreigners for letting the foreigners to "use the children". He has admitted that his mother had kept him in the orphanage thinking that he would get better education. He has also admitted that his mother used to visit the orphanage, but he never informed his mother what accused Freddy

Peats used to ask him to do. He has also admitted that he had not mentioned the name of accused No.3 in the statement recorded by the police. He has admitted that he was interrogated by the CBI in respect of the foreigners who used to visit the flat of accused Freddy Peats. He has also admitted that he was shown the photographs of foreigners by the CBI and was asked to identify them. He has also admitted that he had met accused No.3 after the arrest of accused No.1 Freddy Peats. He has clarified that the incident that accused No.3 Owens asked him to masturbate, was prior to the arrest of accused No.1 Freddy Peats. The following question was asked to him in the cross examination :

> "Q. On the last date of your deposition, you had stated in the morning session that said Owens had not misbehaved with you, whereas during the afternoon session you have deposed that said Owens had asked you to masturbate him and to suck his penis. Can you state as to why you made such contradictory statements?
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> A. I say that during the morning session I had not understood the question which was asked by P.P. and as such I had stated that

said Owens had not misbehaved with me. I gave the correct reply after having understood the nature of the question in the afternoon session."

10. PW.14 states that he used to come with the cattle at the place near the orphanage of accused No.1 Freddy Peats and during this time he used to meet the boys from the orphanage where he became friendly with the boys. The boys took him to the orphanage. He states that initially he used to go to the orphanage occasionally and thereafter, regularly and after that he started staying in the orphanage. He states that at that time he was 10 years of age. PW.14 states that accused No.1 Freddy Peats used to remain naked when he was inside the flat. When PW.14 was in the orphanage, accused No.1 Freddy Peats gave him bath and told him to come inside his room. He states that accused No.1 Freddy Peats did not give him any clothes nor he allowed him to wear any clothes, and when PW.14 was in the room of accused No.1 Freddy Peats, he told him to masturbate him. PW.14 states that every time when PW.14 stayed in the orphanage, accused No.1 Freddy Peats used to ask him to masturbate him, which continued till he was 12 years of age. PW.14 states that accused No.1 also used to keep other boys inside

the bedroom and close the door of the bedroom. He states that he knows accused No.3 E.C. Macbride alias Owens, as he had seen him in the orphanage of accused No.1 Freddy Peats and many other foreigners used to visit the orphanage run by accused No.1 Freddy Peats. They used to have talks with accused No.1 Freddy Peats. The foreigners used to come individually and not in groups. PW.14 states that the foreigners also used to talk to the inmates of the orphanage and used to take them out after taking permission of accused No.1 Freddy Peats. He states that he does not have mother and he was staying in the orphanage and his father was a drunkard. He was once taken by accused No.3 E.C. Macbride to Benaulim where he was residing in a bungalow on the ground floor and he spent one entire day and night with accused No.3 Owens, where accused No.3 Owens removed his clothes and asked him to masturbate him and also told him to suck his penis in his mouth. He states that accused No.3 Owens visited the orphanage of accused No.1 Freddy Peats on several occasions. PW.14 states that accused No.3 had paid him Rs.200/- when he had gone with him at Benaulim. Accused No.3 also used to give him money whenever he used to visit the orphanage. He states that accused No.3 used to visit Goa every year and every time he used to come to the orphanage and take

some children from the orphanage along with him. PW.14 states that accused No.3 E.C. Macbride @ Owens had also written letters to him. He states that accused No.1 Freddy Peats had opened an account in Canara Bank in his name and used to deposit money in his account.

11. PW.14, in his cross examination, has stated that he does not recollect the year in which he went to the orphanage of accused No.1 Freddy Peats. He has admitted that he was aged about 10 years at that time. He has also admitted that he was present in the orphanage when accused Freddy Peats was arrested and he was then aged about 16 to 17 years. He has admitted that he does not recollect how many years prior to the arrest of the accused No.1 Freddy Peats, he had seen accused No.3 Macbride Owens. He, however, states that accused No.3 used to regularly visit the orphanage. He has denied the suggestion that accused No.3 had not asked PW.14 to masturbate him and that he had not indulged in any sexual activities.

12. PW.15 states that his father was unemployed. His mother was working and her income was not sufficient to meet the expenses of the family.

His mother had, therefore, kept his sisters in a convent and he was kept in the orphanage of accused No.1 Freddy Peats. He was about 10 years of age when he was sent to the orphanage. About 10 years back, his mother had gone to Gujarath from where she never returned. Accused Freddy Peats had shifted his orphanage from Colva to Fatorda and there were about 20 boys in the orphanage. According to him, accused No.1 mostly used to remain naked and used to tell the boys that he was a doctor. He used to take young boys of 6 to 7 years of age to his bedroom on the pretext of examining them. He used to remove their clothes and used to masturbate these boys and also used to suck their penis. He used to also take their naked photographs. Accused No.1 Freddy Peats had also told PW.15 to masturbate him and had also sucked his penis when he was small. He narrates one incident where a foreigner by name France Chihle from Germany, who had taken PW.15 to Germany. He states that he was 18 years of age when he had gone to Germany. He has also stated that accused No.3 used to visit the orphanage of accused No.1 and take the children with him.

13. PW.2 also states on similar lines. He has identified accused No.3 as the foreigner who used to take the children to a tourist hostel.

14. On the face of such an overwhelming evidence, the learned trial Court convicted and sentenced the accused as aforestated. With the assistance of Mr. S.N. Joshi, the learned Counsel on behalf of the appellant Freddy Peats and Mr. S.G. Bhobe, the learned Counsel appearing on behalf the appellant Macbride, I have perused the evidence of the witesses as well as the Judgment of the learned trial Court. The conviction of accused No.3 Macbride for the offence punishable under Section 367 is unsustainable. The witnesses have admitted that accused No.3 Macbride had taken the children with the consent of accused Freddy Peats in whose custody they were. Even, otherwise, accused Macbride is sentenced to serve 7 years R.I. for an offence punishable under Section 377 of the I.P.C. The sentences have been directed to run concurrently. Therefore, according to me, there is no evidence for sustaining the conviction of accused No.3 Macbride for an offence punishable under Section 367 of the I.P.C.

15. Accused No.3 Macbride @ Owens had examined himself as DW.1. According to him, there was no evidence against him. According to him, the witnesses namely PW.8, PW.9 and PW.14 were compelled to give evidence against him. However, in the

examination-in-Chief, he has admitted that there were two charges against him in New Zealand. He has also admitted that he was still attractive towards young boys, but sexually he was not active. In the cross examination, he has denied the suggestion regarding his indulging in various sexually perverted activities. The evidence of PW.8, PW.9 and PW.14 prove the offence against the appellant Macbride beyond reasonable doubt.

16. I have given my anxious consideration to the evidence on record and I found that the learned trial Court has appreciated the evidence correctly and has convicted and sentenced the appellant/accused No.1 Freddy Peats. No interference is called for in the appeal filed by the appellant Freddy Peats. Accordingly Criminal Appeal No.44/2002 is dismissed.

17. Criminal Appeal No.38/2003 is, partly, allowed. The conviction and sentence of the appellant/accused No.3 for an offence punishable under Section 367 I.P.C. is, hereby, quashed and set aside and the appellant is acquitted of the said charge. However, the conviction and sentence of the appellant in respect of other offence, is confirmed.

P.V. HARDAS, J.

ssm.